IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26 .10.2006

CORAM:

THE HONOURABLE MRS. JUSTICE R. BANUMATHI

Writ Petition No.1200 of 2001

The Chennai Corporation Store
Keepers Association,
rep. by its Secretary K. Chengaiah : Petitioner

Vs.

1. The Secretary to Government,
   Finance Department,
   Chennai.9.

2. The Commissioner,
   Chennai Corporation,
   Chennai.

3. The Deputy Commissioner (R&F),
   Chennai Corporation,
   Rippon Building,
   Chennai.2. : Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in pursuant to the Impugned Circular passed by 3rd Respondent in Proc.FAC.No.P.C./3605/99, dated 23.12.2000 and quash the same to direct the Respondents to grant the revised scale of pay of Rs.5500-175-9000 notionally with effect from 1.1.96 and with monetary benefits from 1.9.98 to the members of the Petitioner Association working in the category of Store Keepers in Chennai Corporation.

For Petitioner : Mr. S.M.Subramaniam

For Respondents : Mrs.V.BhavaniSubbaroyan-R1
Mr. V. Bharathidasan - R2 & R3

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ORDER

Chennai Corporation Store Keeper Association has filed this writ petition for a direction to grant revised scale of pay of Rs.5500 – 9000 notionally with effect from 1.1.1996 with monetary benefits from 1.1.1998.

2. This writ petition arises out of the following factual back ground:-

(i) Based on the recommendations of the official committee 1998, orders were issued in G.O.Ms.No. 162 Finance(PC) Department dated 13.4.1998 revising the scales of pay of employees/ teachers with effect from 1.1.1996 with monetary benefits from 1.1.1998. Accordingly, the scale of pay of the Superintendents in the Tamil Nadu Ministerial Service under common categories and the post of Section Manager and the Store Keeper in Chennai Corporation was fixed as Rs.5300 – 8300 against their pre-revised scale of pay of Rs.1600 – 2660. As per the recommendations of the one man commission, the scale of pay of Superintendents and also Commercial Accountant was fixed at Rs.5500 – 9000 notionally with effect from 1.1.1996 with monetary benefit from 1.9.1998.

2.2 The Chennai Corporation has sought for clarification from the Government whether the Superintendent scale of pay of Rs.5500 – 9000 could be extended to the post of Store Keeper. The Government has clarified that the revised scale of pay of Rs.5500 – 9000 granted to the Superintendents cannot be made applicable to the post of Store Keepers of Chennai Corporation. As per the Government Orders, the Second Respondent has issued the impugned proceedings directing to fix the scale of pay of Rs.5300 – 8300 to Store Keepers and to recover the excess payment already made by fixing their pay in the time scale of pay of Rs.5500 – 9000 which is challenged in this Writ Petition.

2.3. Tracing the constitution of the Pay Commission and the One Man Commission, the Government has filed the counter affidavit stating that the revision of pay scale of Rs.5500 – 9000 is only for the Superintendents and the Commercial Accountants and the revision has not been extended to any other categories such of the Section Managers and Store Keepers in the Corporation of Chennai.

2.4. The Corporation has filed the counter affidavit stating that only the Government is the final authority to fix the scale of pay and the impugned proceedings was issued only to have the Government Orders implemented in the Corporation of Chennai.

3.1. Contending that the post of Store Keepers and Section Managers are equivalent and have the same kind of responsibilities and duties, the learned counsel for the Petitioner has submitted that since

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both the posts are equivalent, the scale of pay is to be paid to the Store Keepers on par with the Section Managers. Drawing the attention of the Court to the service rules of Subordinate Service Rules of the Corporation, the learned counsel for the petitioner urged that all along two categories have been treated equally and after the revised scale of pay, the Store Keepers cannot be discriminated.

3.2. Drawing the attention of the Court to the letter of the Government dated 23.12.2005, the learned Government Advocate has submitted that even the Section Managers of Chennai Corporation are not entitled to for the revised scale of pay of Rs.5500 – 9000. The learned counsel has submitted that the Government has requested the Corporation to re-fix the pay of Section Managers of Chennai Corporation in the revised scale of pay of Rs.5300 – 8300 and to recover the excess pay drawn by the individuals and while so, the Petitioner cannot seek for any direction in the Writ Petition.

4. I have carefully considered the contentions of the parties and the averments in the petition and in the counter affidavit.

5. In the counter affidavit filed by the Government, the Government has made it clear that the Superintendents' scale of pay of Rs.5500 -9000 fixed to the Superintendents has not been extended to any other categories which carried the pre-revised scale of pay of Rs.1600 – 2660 such as Section Managers and Store Keepers in the Corporation of Chennai.

6. It is well settled that when the Government takes a decision either for equation of posts or that the post to carry different scales of pay, the High Court has no power to go into the merits or otherwise of such equation of posts or treating the posts differently.

7. Equation of posts and determination of pay scales is the primary function of the executive and not the judiciary. Ordinarily the Court will not enter upon the task of job evaluation which is generally left to the expert body like Pay Commission but that is not to say that Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction, Secretary, Finance Department V. West Bengal Registration Service Association, (A.I.R. 1992 SC 1203)

8. Whether two posts are equal or should carry equal pay depends upon several factors. Two posts may appear to be same dor similar but there may be difference in degrees in the performances. Equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. If there is any such determination by a commission or committee the Court should normally accept it unless it is shown that it was made on extraneous

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considerations, State of U.P. V. J.P. Chaurasia, (A.I.R. 1989 SC. 19)

9. Making a strong case that both the posts of Section Managers and Store Keepers are equivalent, the learned counsel for the petitioner assiduously collected and produced various circulars issued by the Corporation.

10. Stating that both the posts are not equivalent and that the responsibilities of the Store Keepers and the Section Managers are different, the Corporation has filed the counter wherein it has been avered as under:-

> "....the post of Store Keeper is filled up by getting option among the category of Assistants. It is not therefore being filled up by promotion as in the case of Section ManagerS. Assistant Store Keeper is also being promoted as Store Keeper. As such, the scale of pay cannot be linked with the responsibility of the Store Keeper with that of Section Manager. Further, the Store Keeper happens to deal only with stores; Administrative matters such as scrutiny of PRS, extracting work from Junior Assistant, Assistant and scrutinizing of files, etc., are not being attended to by the Store Keeper. Moreover, selection to the post of Store Keeper is through option from among Assistants in the Corporation of Chennai....".

11. Though much arguments were advanced regarding the nature of responsibilities of both posts and the Rules regarding the promotions, this Court need not to go deep into those aspects in view of the subsequent letter from the Government dated 23.12.2005. Expressing disapproval over the averments in the counter affidavit of the Corporation and raising strong objection for fixing revised scale of pay of Rs.5500 – 9000 to the Section Managers, the Government has sent a letter (dated 23.12.2005) to the Corporation. In the said letter, the Government has stated as follows:-

> "On a perusal of Para-5 of the counter affidavit relating to W.P.No. 1200 of 2001, it has been mentioned that the Corporation of Chennai has extended the revised scale of pay Rs.5500 – 9000 to the Section Manager based on Government Letter. It has been ascertained from your office that the above scale of pay has been allowed to Section managers based on the G.O.Ms.No. 428, Finance (PC) Department, dated 28.9.1998. The above order is applicable only to the Superintendents/Commercial Accountants under common Category and the same has not been extended to all categories in the pre-revised scale of pay of Rs.1600-2660. As such the Section Managers of Chennai Corporation are also not entitled for the revised scale of pay of Rs.5500 – 9000 and the clarification issued in the letter first cited will equally apply to the Section Managers of

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Chennai Corporation also. Their appropriate revised scale of pay with effect from 1.1.96 is Rs.5300 - 8300 only as against the pre-revised scale of pay of Rs.1600 - 2660. I am therefore, directed to request you to arrange to re-fix the pay of Section Managers of Chennai Corporation in the revised scale of pay of Rs.5300 - 8300 and to recover the excess pay drawn by the individuals immediately".

12. Since the Government has directed the Corporation to arrange to re-fix the pay of the Section Managers in the revised pay scale of Rs.5300 - 8300, no further consideration of the Writ Petition is necessitated.

13. Contending that there cannot be any recovery of any excess amount which has already been paid to the Store Keepers, the learned counsel for the Petitioner has relied upon the decision reported in Shyam Babu Verma and others - Vs. - Union of India and others (J.T. 1994, 1, S.C. 574) where the scale of pay fixed erroneously, the Supreme Court observed that " It shall only be just and proper not to recover any excess amount which has already been paid to them and directed that no steps should be taken to recover or to adjust any excess amount paid to the Petitioners".
Following the said decision, in the case on hand, this Court directs that no steps should be taken to recover or adjust the amount paid to the Store Keepers.

14. With the above observation, this writ petition is dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ra

To
1. The Secretary to Government,
   Finance Department,
   Chennai.9.

2. The Commissioner,
   Chennai Corporation,
   Chennai.

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3. The Deputy Commissioner (R&F),
   Chennai Corporation,
   Rippon Building,
   Chennai.2.

+ 1 CC To Mr. S.M.Subramaniam, Advocate SR NO.50294

+ 1 CC To Mr. V.Bharathidasan, Advocate SR NO.50161

+ 1 CC to the Government Pleader SR NO 50045

W.P.No. 1200 of 2001
Date:26.10.2006

ms(co)
Gp/9.11.

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